IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 439 of 2000
in
COMPANY PETITION No 157 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULAMNABI SHARKUBHAI AJMERI

Versus

O.L. OF A'BAD MFG. & CALICO PTG. COMPANY LIMITED.

Appearance:

1. COMPANY APPLICATION No. 439 of 2000
MR ZUBIN F BHARDA for Petitioners No. 1-4
OFFICIAL LIQUIDATOR for Respondent No. 1
MR MANISH R BHATT for Respondent No. 1
MR KS ACHARYA for Respondent No. 1
MR MS RAO for Respondent No. 1
SINGHI & BUCH ASSO. for Respondent No. 1
MR MUKUL SINHA for Respondent No. 1
MR AC GANDHI for Respondent No. 1
MR DS VASAVADA for Respondent No. 1
M/S TRIVEDI & GUPTA for Respondent No. 1
MR RN SHAH for Respondent No. 1
NOTICE SERVED for Respondents No. 2-3,5,7-9
MR PRANAV G DESAI for Respondent No. 4
MR RM DESAI for Respondent No. 6

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/12/2001

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Bharda appearing for the applicant.

2. This Judge's Summons is taken out by Shri Gulamnabi Shakurbhai Ajmeri, owner of the immovable property namely chawl bearing Municipal Census No. 102, Survey Nos. 273/1/94, 273/1/100 and 273/1/101 being Final Plot No. 384 admeasuring 2375 Sq.Ft. consisting of the first and second floors of Ajmera Chambers, Behrampura, Ahmedabad which was let out to M/s The Ahmedabad Manufacturing and Calico Printing Co. Ltd. (In Liquidation). It is contended that this property belongs to the present applicants. Documentary evidence produced by the applicants shows that this property originally belonged to one Usmanbhai and the same was given on lease to Calico Mills Ltd. (In liquidation). predecessor-in-title of the present applicants namely Shakurbhai Ismail had purchased this property from Shri Usman Nanji under a sale-deed. There is sufficient evidence on record to show that on purchase of the said property, deceased Ajmeri Shakurbhai was getting regular rent from the Mill Company. On death of Shakurbhai, the present applicants, being direct heirs and legal representatives, are claiming the ownership of the property in question. Right, title and interest qua the property claimed by the present applicants have not been challenged by the other side.

3. It has been verified by the O.L. that this specific property is not under any charge of any of the secured creditors. Undisputedly, because of winding up proceedings and order passed by the Court, the business of the Mill Company which had acquired this property on lease, has come to an end. The say of the applicants is that as this property is not required for the purpose of the Company, the same should be handed over back to the landlord. I am satisfied that the applicants are entitled to get the possession of aforesaid immovable property back.

4. Ld. counsel Mr. Bharda, appearing for the applicants has placed reliance on two decisions, namely (i) Ravindra Ishwardas Shethna & Another v/s Official Liquidator, High Court, Bombay & Another, reported in 54 Company Cases P.702, and (ii) Industrial Mills Estate, v/s O.L. of Ilac Ltd., decision dated 9.6.2001 rendered by this Court in Company Application No. 303/2000 in

Company Petition No. 302/1997. I would like quote relevant observations of the Apex Court in the case of Ravindra Ishwardas Sethna & Anr. (supra) :-

" If the business carried on by a company comes to a standstill as a result of the company being ordered to be wound up, there is no question of the business of the company to be carried on by the liquidator, and that too, for the beneficial winding up of the company. Whether to carry on the business of the company which is ordered to be wound up is not a matter left to the uncontrolled discretion of the liquidator. The liquidator undoubtedly has the power under S.457 of the Companies Act, 1956 to carry on the business of the company, if it is necessary for the beneficial winding up of the company. And, this power can be exercised not at the discretion of the liquidator, but with the sanction of the Court. The liquidator with the sanction of the court can carry on the business of the company only to the extent that such carrying on of the business is necessary for the beneficial winding up of the company.

Where a company which was carrying on the business of floating prize chit schemes in Bombay in premises taken on a lease of indefinite duration, and upon the company being ordered tobe wound up, the business came to a standstill, the premises were of no use to the liquidator, and the company being a statutory tenant, was prohibited by ss.13 & 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1948, from giving possession of the premises to a third party on licence or a sub-lease: Held, that it was not permissible for the liquidator to seek direction from the company court for parting with possession of the premises, or for the court to authorise the liquidator to go round the Rent Act and enter into an agreement with a third party on a caretaker basis on monthly compensation; and that the only course open to the court was to direct the liquidator to surrender possession to the landlord and save recurring liability to pay rent."

Considering the accepted proposal of law, the prayer of the applicant shall have to be granted.

5. Official Liquidator of the Company who is present in the Court states that the property in question was

used as godown by the Mill Company and some furniture namely iron racks and other scrape material is lying in the said premises. It is submitted by the Official Liquidator that it would not be physically possible for the Official Liquidator to shift these iron racks at some other place. It would be also expensive and difficult still the same is sold to any third party. To mitigate the loss and for the sake of convenience, Official Liquidator was directed to get iron racks valued through approved valuer along with the furniture lying in the property in question. O.L. , on the strength of the report of the approved valuer, has submitted that furniture namely iron racks, wooden stools, tables, chairs along with electricity fixtures is worth Rs. 69,000/. He has further submitted that the record like Ledger Books, Registers, Books of Accounts and other books which were found rusty and poor condition, were assessed at Rs. 1000/. This record shall have to be shifted by the O.L. and he states that he will be able to shift this record at any convenient place. It is further submitted by the O.L. that the applicants should be granted possession provided they are ready to purchase the entire furniture lying in the premises except the record at the price valued by the approved valuer or for any other higher value. Ld. counsel Mr. Vasavada appearing for TLA has resisted handing over of possession of the premises. But in view of the settled legal position, the say of ld. counsel Mr. Vasavada is not accepted. Mr. Bharda, ld. counsel appearing for the applicants has fairly stated that though the valuation of the furniture etc. lying in the property in question is on higher side, the applicants are ready to even pay higher amount that may be suggested. In response to the query raised by the Court, ld. counsel Mr. Bharda for the applicants states that applicants shall pay Rs.95,000/ (Rs. Ninty five thousand only) towards the price of total material lying in the property in question except the record. He has, however, submitted that he is entitled to get adjustment of Rs. 7000/ already deposited with the O.L. by him as earnest money from the amount of Rs. 95,000/.

6. Ld. counsel Mr. Bharda appearing for the applicants submits that the applicants are agreeable to waive arrears of rent to be recovered and will also bear Municipal Tax Amount, if any payable. I have referred the order passed by this Court on 3.10.2001 for the purpose. It is clarified that the applicants shall not be entitled to claim any amount from Mill Company through O.L. under the head of arrears of rent or non-payment of Municipal Taxes.

7. O.L. is, therefore, directed to handover peaceful possession of the premises in question on realisation of the total amount of Rs.95,000/ (Rs. Ninty five thousand only) towards the price of furniture etc. lying in the property in question except books of record and on receipt of joint undertaking signed by all the applicants to the effect that they have waived their right to recover arrears of rent and shall pay municipal tax amount, if any payable. It is, however, clarified that the applicants shall be entitled to adjustment of Rs. 7,000/ paid by way of earnest money from the amount Rs.95,000/. On receipt of the amount as aforesaid and joint undertaking signed by all the applicants, O.L. shall handover peaceful possession of the aforesaid immovable property within three weeks thereof by removing the record of the Mill Company. The applicants shall pay balance amount at the earliest and shall also file joint undertaking before the O.L. to the effect that they waive right to recover arrears of rent from the Mill Company and shall pay Municipal Tax Amount, if any payable. They shall also file an undertaking to the effect that they will not sell or dispose of the immmovable property in question for 12 months from the date of receipt of the possession thereof. Undertaking to be filed at the earliest.

8. O.L. is also directed to pay Rs. 2000/ to the approved valuer Mr. Naresh K.Shah towards Valuation Charges and Rs. 1000/ to M/s Kiran Shah & Associates towards his fees for preparation of Search Report from the amount realised from the sale of the properties of the company (In-liquidation).

9. Company Application is allowed accordingly. No costs. Applicants can request O.L. to grant certificate in favour of the applicants to the effect that the property in question was locked and was not under use because the same was taken over by O.L. under the orders of winding up of the Company. O.L. may mention specific period in the certificate.

7.12.2001 [C.K. BUCH, J]

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